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**DECISION**



*J. Suter*  
*Proc I*

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-191215

**DATE:** June 6, 1978

**MATTER OF:** Amdahl Corporation (reconsideration)

**DIGEST:**

1. Prior decision is affirmed where request for reconsideration fails to demonstrate error of fact or law in determination to dismiss as untimely protest of alleged impropriety in solicitation presented at earliest as part of protester's initial proposal and second basis of protest presented more than 10 days after rejection of offer to furnish one processor in lieu of two specified in solicitation.
2. Disagreement as to technical capability and capacity of one vendor's central processor does not present significant issue under exception permitting consideration of untimely protests.

We have been asked by the Amdahl Corporation (Amdahl) to reconsider our decision in Amdahl Corporation, B-191215 March 28, 1978, 78-1 CPD 237.

On February 3, 1978, Amdahl filed a protest with our Office under a request for proposals (RFP) issued by the Air Force Computer Acquisition Office. The RFP required offerors to furnish one or more of the four following mandatory central processor configurations:

	<u>Quantity</u>	<u>Processor</u>
A.	1	IBM Model 3033
B.	1	IBM Model 370/168MP
C.	2	Amdahl Model 470/V611
D.	1	Amdahl Model 470/V7

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Initial proposals were received on October 20, 1977. Amdahl proposed to furnish only one (1) Amdahl Model 470/V6II which it contended could meet the user's needs. The Air Force advised Amdahl on November 18, 1977, that its proposal was unacceptable and that the specification would not be changed.

Amdahl contended in its protest that (1) the specifications should have been changed and (2) that its offer of one Amdahl Model 470/V6II processor met the requirements of the specifications.

We found both of Amdahl's contentions to be untimely under our Bid Protest Procedures, 4 C.F.R. part 20 (1977), and dismissed the protest. In this connection we stated:

"With regard to Amdahl's first contention, our Bid Protest Procedures, 4 C.F.R. part 20 (1976), require that a protest 'based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals.' 4 C.F.R. § 20.2(b)(1) (Emphasis supplied.) Amdahl's protest against the requirement for two Amdahl Model 470/V6II processors was raised at the earliest at the time that Amdahl submitted its initial proposal. We have held previously that a protest of an apparent impropriety in a solicitation was untimely where the protest was first submitted with the protester's bid. See American Can Company - Reconsideration, B-186974, August 19, 1976, 76-2 CPD 178; Emerson Electric Co., B-184346, September 9, 1975, 75-2 CPD 141. Although this was a negotiated procurement, the same rule applies where the protest is first submitted with the initial proposal. Consequently, we find Amdahl's first contention untimely and not for consideration on the merits.

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"In connection with Amdahl's second contention, we think it is clear that this aspect of the protest is also untimely as the Air Force's refusal to accept one Amdahl Model 470/V6II processor or change the specifications was communicated to Amdahl on November 18, 1977, more than 10 days before its protest was filed on February 3, 1978. 4 C.F.R. § 20.2(b)(2)."

Amdahl now contends that it is a mistake of fact to conclude that the Air Force and Amdahl were not negotiating the issue of specification changes beyond November 18 and that the oral advice of that date was an adverse agency action. Amdahl states that "it is inconceivable that the date for initial proposals deadline for protest should be applicable herein, in light of such active negotiations."

We think it clear that the alleged defect in the specifications to which Amdahl's protest was directed was apparent on the face of the solicitation, i.e., prior to the date set for receipt of initial proposals. In these circumstances and in view of the language of section 20.2(b)(1) of our Bid Protest Procedures, quoted in part above, we consider it not inconceivable, but, rather, inevitable that this standard be applied. Since it is undisputed that Amdahl did not raise the question of alleged improprieties in the specifications prior to the receipt of initial proposals, we consider this contention clearly untimely. The conduct of negotiations by the Air Force on this question after October 20, or even November 18, has no bearing on our resolution of this aspect of the protest.

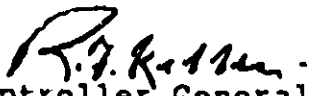
Neither do we agree with Amdahl's interpretation of the November 18 negotiation session with the Air Force. We think the advice by the Air Force in that session that the specifications would not be changed constituted clear evidence to Amdahl of an Air Force position adverse to Amdahl's interest. See Brandon Applied Systems, Inc.,

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B-188738, December 21, 1977, 77-2 CPD 486. In these circumstances, Amdahl is charged with the knowledge as of that date that the Air Force did not consider its offer of one Model 470/V6II CPU to meet the requirements of the solicitation. Consequently, Amdahl's protest more than 10 working days after the date of this advice was untimely under § 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(2) (1977). Hydraulic Technology, Inc., November 30, 1977, 77-2 CPD 431.

Amdahl also argues that the question of "hardware equivalency in the top end of the CPU marketplace" is significant and that it is an error of fact for our Office not to conclude that Amdahl's protest raises significant issues warranting consideration despite untimely presentation. We do not agree. A significant issue is one involving a procurement principle of widespread interest. 52 Comp. Gen. 20 (1972). Despite Amdahl's characterization of the issues presented, we view the central question involved here to concern at best a technical disagreement over the capability and capacity of one vendor's CPU. We do not regard this to be a significant issue within the meaning of our Bid Protest Procedures, 4 C.F.R. § 20.2(c) (1977).

Amdahl has failed to demonstrate any error of fact or law in our prior decision. Accordingly, our prior decision is affirmed.

  
Acting Comptroller General  
of the United States